

Message Text

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12

ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-03 H-01 INR-05 L-01

NSAE-00 NSC-05 PA-01 RSC-01 PRS-01 SP-02 SS-15

USIA-06 IO-04 SAM-01 SAJ-01 ACDA-05 /065 W

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R 011536Z NOV 74

FM USMISSION USBERLIN

TO SECSTATE WASHDC 69

AMEMBASSY BONN

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L USBERLIN 2007

E.O. 11652: GDS

TAGS: PGOV, WB, GW

SUBJECT: REQUESTED PUBLICATION OF BK/L

REF: BONN 17044

1. BK/L'S AS MECHANISM WHEREBY ALLIED KOMMANDATURA CONVEYS TO GOVERNING MAYOR INSTRUCTIONS, INTERPRETATIONS, AND RESERVATIONS THAT WOULD NOT BE APPROPRIATE FOR PUBLISHED BK/O, ARE HANDLED AS CONFIDENTIAL DOCUMENTS BY BOTH SENAT AND ALLIES. TO OUR RECOLLECTION VERY FEW BK/L'S HAVE THUS FAR BEEN ALLOWED TO ENTER PUBLIC DOMAIN, ALTHOUGH SOME, WE UNDERSTAND, HAVE BEEN LEAKED, AND WE WOULD BE RELUCTANT TO ESTABLISH PRECEDENT OF OFFICIAL RELEASE IN BRUECKMANN CASE. WHILE U.S. LAW MAY NOT PERMIT US TO PROTECT BK/L UNILATERALLY, IT SHOULD BE BORNE IN MIND THAT THIS IS TRIPARTITE DOCUMENT AND CONCURRENCE OF ALL THREE ALLIES IS REQUIRED FOR PUBLICATION. FURTHERMORE, IN INTEREST OF KEEPING OUR RELATIONS WITH SENAT ON EVEN KEEL, WE WOULD FEEL OBLIGED TO OBTAIN CLEARANCE FROM GOVERNING
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MAYOR.

2. IN PAST WE HAVE REFUSED TO MAKE BK/L'S AVAILABLE TO SOVIETS AND OTHERS WHO HAVE REQUESTED THEM. WHILE BK/L (74)9 IS USEFUL DOCUMENT WITH NO EMBARRASSING CONTENT, WE BELIEVE IT WOULD BE BEST TO AVOID PRECEDENT WITH WHICH IT MIGHT BE DIFFICULT TO LIVE WHEN FACED WITH REQUESTS FOR MORE CONTROVERSIAL DOCUMENTS.

3. SOVIETS ARE FULLY AWARE OF OUR POSITION THAT FEDERAL CONSTITUTIONAL COURT HAS NO COMPETENCE IN BERLIN AND VARIOUS DOCUMENTS TO THIS EFFECT ARE IN PUBLIC DOMAIN AS COURT DOCUMENT, E.G, ALLIED LETTER TO SENATOR KORBER OF APRIL 1974 ON BRUECKMANN CASE AND MAY 1974 ALLIED CERTIFICATE TO KAMMERGERICHT. FORTH-COMING ARTICLE IN DEUTSCHLAND ARCHIV ON LEGAL UNITY OF FRG AND BERLIN BY NAWROCKI OF DIE ZEIT REFERS TO BOTH FO THESE AS WELL AS TO CONTENT OF BK/L (74)9, ALTHOUGH NUMBER OF BK/L IS NOT CITED. MOREOVER, FACT THAT ALLIES PROHIBITED SENAT FROM SUPPLYING DOCUMENTS TO COURT IN BRUECKMANN CASE WAS REPORTED IN PRESS SHORTLY AFTER EVENT (E.G. MARCH 27 TAGESSPIEGE), AND THIS WILL NOT HAVE ESCAPED WEST BERLIN EXPERTS IN SOVIET EMBASSY EAST BERLIN.SELIGMANN

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